

USDC SDNY

DOCUMENT

ELECTRONICALLY FILED

DOC #:

DATE FILED:

6/12/12

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TWANA ADAMS, et al.,

Plaintiffs,

- against -

NEW YORK STATE EDUCATION DEPARTMENT:  
et al.,

Defendants.

-----X  
VICTOR MARRERO, United States District Judge.

08 Civ. 5996 (VM)

**DECISION AND ORDER**

**I. BACKGROUND**

By Order dated May 24, 2012 (the "May 24 Order"), Magistrate Judge Andrew Peck, to whom this matter had been referred for supervision of pretrial proceedings and enforcement of the Court's sanctions Order dated April 10, 2012, (the "April 10 Order"), issued an Order denying an application by Attorney Nicholas Penkovsky ("Penkovsky") requesting a stay of payment of the sanction imposed by the Court's April 10 Order, and an extension of time to file a Notice of Appeal of the April 10 Order. Penkovsky filed objections to the May 24 Order. For the reasons stated below, the Court adopts the recommendation of the May 24 Order.

## **II. STANDARD OF REVIEW**

A district court evaluating a Magistrate Judge's order with respect to a matter not dispositive of a claim or defense may adopt the Magistrate Judge's findings and conclusions as long as the factual and legal bases supporting the ruling are not clearly erroneous or contrary to law. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); Thomas v. Arn, 474 U.S. 140, 149 (1985). A district judge, after considering any objections by the parties, may accept, set aside, or modify, in whole or in part, the findings and recommendations of the Magistrate Judge with regard to such matters. See Fed. R. Civ. P. 72(a); see also DeLuca v. Lord, 858 F. Supp. 1330, 1345 (S.D.N.Y. 1994).

## **III. DISCUSSION**

Having conducted a review of the full factual record in this litigation, including the April 10 Order and the May 24 Order, as well as Penkovsky's papers submitted in connection with the underlying matter in this proceeding, as well as applicable legal authorities, the Court concludes that the findings and reasoning for the recommendation of the May 24 Order are not clearly erroneous or contrary to law and are thus warranted.

The Court's April 10 Order imposing sanctions on Penkovsky directed payment within thirty days of the date of that Order. Penkovsky did not comply. Nor did he seek an extension of the payment due date from this Court or file a timely Notice of Appeal. Instead, in response to Magistrate Judge Peck's Order to Show Cause dated May 15, 2012, by motion entered on May 18, 2012 Penkovsky finally requested an extension to file a Notice of Appeal. As ground for his application, Penkovsky asserted excusable neglect. The Court is not persuaded that Penkovsky's explanation is sufficient to justify the relief he seeks. In paragraph 10 of his May 18, 2012 Affidavit in support of his motion he describes certain personal domestic issues that he states arose after the April 10 Order, occupied him full time, and precluded his giving any attention to this action. By his own recitation, however, the special circumstances he sets forth began on May 2, 2012 – a full three weeks after the entry of the April 10 Order. Certainly, more than enough time had elapsed prior to May 2, 2012 for Penkovsky to have either sought an extension from this Court or filed a perfunctory, one-paragraph Notice of Appeal. On this basis alone, this Court would find Penkovsky's application as meriting denial in every respect, even absent the recommendation of Magistrate Judge Peck.

Accordingly. the Court adopts the May 24 Order and denies Penkovsky's application for a stay of payment and extension of time to file a Notice of Appeal.

**IV. ORDER**

For the reasons discussed above, it is hereby

**ORDERED** that the Court adopts as its own action the Order of Magistrate Judge Andrew Peck dated May 24, 2012 (Docket No. 321) and denies the objections of Attorney Nicholas Penkovsky.

**SO ORDERED.**

Dated: NEW YORK, NEW YORK  
13 June 2012

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

Victor Marrero  
U.S.D.J.